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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 69

[Docket ID: DOD-2014-OS-0006]

RIN 0790-AJ18

School Boards for DoD Domestic Dependent Elementary and Secondary Schools (DDESS)

AGENCY: Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule establishes policy, assigns responsibilities, and provides procedures for the establishment and operation of elected school boards for elementary, middle and high schools operated by the DoD Education Activity in the Continental United States and the Territories, Possessions and Commonwealths. Specific direction is given to facilitate compliance with 10 U.S.C. 2164(d), as implemented by DoD Instruction 1342.25, regarding the election of board members, composition, roles and responsibilities, operating procedures and resolution of conflicts.

DATES: Comments must be received by **[insert date 60 days from date of publication]**.

ADDRESSES: You may submit comments, identified by docket number or Regulatory Information Number (RIN) number and title, by any of the following methods:

- Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail: Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301-9010.

Instructions: All submissions received must include the agency name and docket number or RIN for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Marsha Jacobson, 571-372-1900.

SUPPLEMENTARY INFORMATION:

The revisions to this proposed rule will be reported in future status updates as part of DoD's retrospective plan under Executive Order 13563 completed in August 2011. DoD's full plan can be accessed at: <http://www.regulations.gov/#!docketDetail;D=DOD-2011-OS-0036>.

EXECUTIVE SUMMARY

I. Purpose of the regulatory action

a. Purpose. The Department of Defense has many DoD Domestic Dependent Elementary and Secondary Schools (DDESS) that require school boards to carry out the responsibilities and procedures described in this proposed rule.

b. Succinct statement of legal authority for the regulatory action.

Congress directed the Secretary of Defense to provide for the establishment of school boards at DDESS schools established under the authority of 10 U.S.C. 2164. Pursuant to that direction, the Secretary of Defense issued DoD Instruction 1342.25, *School Boards for Department of Defense Domestic Dependent Elementary and Secondary Schools (DDESS)*, dated October 30,

1996. This rule updates and revises the instruction in accordance with the changes to 10 U.S.C. 2164.

II. Summary of the Major Provisions of the Regulatory Action in Question

The major provisions of this regulatory action include:

- a. Providing a list of the duties and responsibilities school board members will perform.
- b. Describing the process of voting and electing school board members.
- c. Details the school board operating procedures, including written agendas, possible removal of school board members by USD(P&R), reimbursement for official travel, among other procedures discussed in this rule. The vast majority of the duties and responsibilities of school board members and the board operating procedures are unchanged, but several duties have been revised in accordance with various policy changes and legal limitations. In addition, one of the changes is due to the statutory change affecting the establishment of school boards in Puerto Rico and Guam.

III. Costs and Benefits: There are no additional costs associated with the implementation of this rule. This is a revised rule which provides updated guidance and clarification of the language in the statute. The establishment and operation of elected school boards for elementary, middle and high schools operated by the DoD Education Activity on military installations in the United States (including the territories, commonwealths, and possessions of the United States) remain the same. School Boards are elected by the parents of students attending the DoD schools. School Board members do not receive any monetary compensation for their services. Board members voluntarily serve as the conduit between the parents of students attending the DoD schools and the DoDEA District Superintendent who is responsible for overseeing the operation

of the schools. The costs, if any, are only incidental costs. The rule primarily clarifies and updates existing activities with respect to School Board operations.

REGULATORY PROCEDURES

Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review”

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It has been determined that this rule is not a significant regulatory action. The rule does not: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in these Executive Orders.

Sec. 202, Pub. L. 104-4, “Unfunded Mandates Reform Act”

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4) requires agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2014,

that threshold is approximately \$141 million. This document will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Public Law 96-354, “Regulatory Flexibility Act” (5 U.S.C. 601)

The Department of Defense certifies that this proposed rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 69 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, “Federalism”

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This proposed rule will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 69

Elementary and secondary education, Government employees, and Military personnel.

Accordingly 32 CFR part 69 is proposed to be revised to read as follows:

Sec.

69.1 Purpose.

69.2 Applicability.

69.3 Definitions.

69.4 Policy.

69.5 Responsibilities.

69.6 Procedures.

Authority: 5 U.S.C. Appendix, 10 U.S.C. 1783 and 2164.

**PART 69—SCHOOL BOARDS FOR DOD DOMESTIC DEPENDENT ELEMENTARY
AND SECONDARY SCHOOLS (DDESS)**

§69.1 Purpose.

This part establishes policy, assigns responsibilities, and provides procedures for the establishment and operation of elected school boards for schools operated by the DoD in accordance with 10 U.S.C. 2164.

§69.2 Applicability.

This part:

(a) Applies to:

(1) Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD.

(2) Schools (pre-kindergarten through grade 12) operated by the DoD in accordance with DoD Directive 1342.20, “Department of Defense Education Activity (DoDEA)” (available at <http://www.dtic.mil/whs/directives/corres/pdf/134220p.pdf>), and 10 U.S.C. 2164 within the United States and U.S. territories, possessions, and commonwealths.

(b) Does not apply to elected school boards established under State or local law for DDESS special arrangements.

§69.3 Definitions.

Unless otherwise noted, these terms and their definitions are for the purposes of this part.

Arrangements. Actions taken by the Secretary of Defense to provide a free public education to dependent children of active duty military members and civilian employees of the Federal Government in accordance with 10 U.S.C. 2164 through DDESS arrangements or DDESS special arrangements.

DDESS arrangement. An agreement whereby a school operated by the DoD under DoD Directive 1342.20 and 10 U.S.C. 2164 provides a free public education for eligible children.

DDESS special arrangement. An agreement made in accordance with 10 U.S.C. 2164 between the Secretary of Defense, and a local education agency whereby a school or a school system operated by the local education agency or private education agency provides educational services to eligible dependent children of active duty military members and full time DoD civilian employees. Arrangements result in partial or total federal funding to the local public education agency for the educational services provided.

Parent. The biological father or mother of a child when parental rights have not been legally terminated; a person who, by order of a court of competent jurisdiction, has been declared the father or mother of a child by adoption; the legal guardian of a child; or a person in whose household a child resides, provided that such a person stands *in loco parentis* to that child and contributes at least one-half of the child's support.

Quorum. A majority of the total number of school board members authorized on the particular school board.

Special election. A special election is an election that is held between the regularly scheduled annual school board elections.

§69.4 Policy.

It is DoD policy that:

(a) Except for the Commonwealth of Puerto Rico (referred to in this part as “Puerto Rico”) and the Territory of Guam (referred to in this part as “Guam”), each DDESS arrangement must have an elected school board established and operated in accordance with DoD Directive 1342.20 and 10 U.S.C. 2164, and this part. One school board may be established for all such schools in Puerto Rico and in Guam.

(b) Because members of DDESS elected school boards, when acting in the capacity as a school board member, are not U.S. Government employees or members of the military, they may not exercise discretionary governmental authority such as taking personnel actions or establishing governmental policies, or perform other inherently governmental functions.

(c) The DDESS chain of supervision within DDESS for matters relating to DDESS arrangements operated in accordance with DoD Directive 1342.20 and 10 U.S.C. 2164 will be from the Director, DDESS, to the superintendent of each DDESS arrangement. The superintendent will inform the school board of all matters affecting the operation of the DDESS arrangement. Direct liaison among the school board, the Director, DDESS, and the superintendent is authorized for all matters pertaining to the DDESS arrangement.

§69.5 Responsibilities.

(a) Under the authority, direction, and control of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), unless otherwise directed by statute, Presidential directive, or DoD policy, the Assistant Secretary of Defense for Manpower and Reserve Affairs (ASD(M&RA)) makes the final decision on all formal appeals to directives and other guidance submitted by the school board or superintendent.

(b) Under the authority, direction, and control of the ASD(M&RA), the Director, DoD Education Activity (DoDEA), oversees DDESS arrangements and ensures implementation of the procedures in §69.6.

§69.6 Procedures.

(a) Implementation.

(1) The Director, DDESS, will:

(i) Oversee the establishment of elected school boards in DDESS arrangements, which, pursuant to 10 U.S.C. 2164(d)(6), need not comply with the provisions of 5 U.S.C. Appendix, also known and referred to in this part as “The Federal Advisory Committee Act of 1972,” as amended.

(ii) Monitor compliance by the superintendents and school boards with applicable statutory and regulatory requirements and this part. In the event of suspected noncompliance, take appropriate action, which includes notifying the superintendent and the school board president of the affected DDESS arrangement.

(iii) Determine when the actions of a school board conflict with an applicable statute, regulation, or other guidance or when there is a conflict in the views of the school board and the superintendent. When such conflicts occur, assist the superintendent and the school board in resolving them, or direct that such actions be discontinued. Such disapprovals must be in writing to the school board and the superintendent concerned and must state the specific supporting reason or reasons.

(2) School board members will:

(i) Participate in the development and oversight of fiscal, personnel, and educational policies, procedures, and programs for the DDESS arrangement concerned, consistent with this part.

(ii) Approve agendas and prepare minutes for school board meetings. A copy of the approved minutes of school board meetings will be forwarded to the Director, DDESS, within 10 working days after the date the minutes are approved.

(iii) Advise the Director, DDESS, in competitively filling any superintendent vacancy.

(A) If the Director, DDESS, decides not to fill a superintendent vacancy, or to fill a vacancy through internal reassignment, school board members will be provided the opportunity for written comment to the Director, DDESS, on this issue and final determination will be made by the Director, DDESS.

(B) If the Director, DDESS, elects to fill a superintendent vacancy competitively, each school board in the respective school district may, at the school board's discretion, provide one school board representative (i.e., the school board president) to participate as a member of the DDESS Director's selection panel. The school board representative to a selection panel must be either a full-time or permanent part-time government employee, a military member, or a member of a military family, so that the selection panel will not be considered an advisory committee pursuant to the Federal Advisory Committee Act and 10 U.S.C. 1783.

(C) In advising the Director, DDESS, the selection panel will provide advice to the Director, DDESS, by reviewing applications for the superintendent vacancy, preparing a list of qualified candidates, interviewing candidates, and ranking the list of recommended candidates for the DDESS Director's selection.

(iv) Prepare and provide to the Director, DDESS, an annual written review of the superintendent's performance based on established critical elements. This advisory review may be provided to the superintendent or inserted into the final comments of the performance review.

(v) Participate in the development of the district's budget to submit to the Director, DDESS, for his or her approval. Oversee the approved budget, in conjunction with the superintendent, as appropriate for operation of the school arrangement.

(vi) Invite the superintendent to attend all school board meetings.

(vii) Provide advice to the superintendent on the operation of the schools and the implementation of the approved budget.

(viii) Channel communications with school employees to the superintendent. Refer all applications, complaints, and other communications, oral or written, to the superintendent.

(ix) Participate in the development of school policies, rules, and regulations in conjunction with the superintendent, and recommend which policies will be reflected in the school policy manual.

The school policy manual, which will be issued by the superintendent, may include:

(A) A statement of the school philosophy.

(B) The roles and responsibilities of school administrative and educational personnel.

(C) Provisions for publishing an annual school calendar.

(D) Provisions on instructional services, including policies to develop and adopt curriculum and textbooks.

(E) Regulations affecting students, including attendance, grading, promotion, retention, and graduation criteria, and the student code of rights, responsibilities, and conduct.

(F) School policy on community relations and non-instructional services, including maintenance and custodial services, food services, and student transportation.

(G) School policy and legal limits on financial operations, including accounting, disbursing, contracting, and procurement; personnel operations, including conditions of employment and labor management regulations; and the processing of, and response to, complaints.

- (H) Procedures providing for new school board member orientation.
- (I) Any other matters the school board and the superintendent determine to be necessary.
- (x) Prepare and submit formal appeals to directives and other guidance that, in the view of the school board, adversely impact the operation of the DDESS either through the operation and management of DDESS or a specific DDESS arrangement in accordance with 10 U.S.C. 2164.
- (A) Written formal appeals with justification and supporting documentation must be submitted by the school board or superintendent to the ASD(M&RA).
- (B) The ASD(M&RA) will make the final decision on all formal appeals on matters pertaining to his or her charter directive.
- (C) The Director, DDESS, will provide the appealing body a written review of the findings relating to the merits of the appeal.
- (D) Formal appeals will be handled expeditiously by all parties to minimize any adverse impact on the operation of the DDESS arrangement.
- (xi) Enforce school board operating procedures.
- (b) Composition of the School Board.
 - (1) To be a school board member, an individual must be a resident of the military installation at which the DDESS arrangement is located or, in the case of candidates for school boards in Puerto Rico and Guam, be the parent of an eligible child currently enrolled in the DDESS arrangement; cannot be employed by the DDESS arrangement; and cannot be a registered federal lobbyist.
 - (2) The school board will recommend to the Director, DDESS, the number of elected school board voting members, which must be no fewer than three and no more than nine, depending upon local needs. The members of the school board will select by majority vote of the total

number of school board members authorized at the beginning of each official school board term, one member to act as president and another to act as vice president.

- (i) The president and vice president will each serve for 1 year.
 - (ii) The president will preside over school board meetings and provide leadership for related activities and functions.
 - (iii) The vice president will serve in the absence of the president.
 - (iv) If the position of president is vacated for any reason, the vice president will assume the position of president until the position is either vacated or the next annual/regularly-scheduled school board election, whichever occurs first.
 - (v) The resulting vacancy in the position of the vice president will be filled by the majority vote of all members of the incumbent board.
- (3) School board members, with the exception of travel and per diem related to official school board business, may not receive compensation for their service on the school board.
- (4) School board members may not have any financial interest in any company or organization doing business with DDESS. Waivers to this restriction may be granted on a case-by-case basis by the Director, DDESS, in coordination with the Office of General Counsel of the DoDEA.
- (5) The DDESS arrangement superintendent will serve as a non-voting observer to all school board meetings.
- (6) The installation commander will:
- (i) Serve as a non-voting observer to the school board.
 - (ii) Convey command concerns to the school board and the superintendent and keep the school board and the superintendent informed of changes and other matters within the host installation that affect school expenditures or operations.

(c) School Board Electorate. School board members will be elected by parents of students who attend the school. Each parent will have one vote.

(d) Election of School Board Members.

(1) The superintendent, in consultation with the school board, will be responsible for developing the plans for nominating school board members and conducting the school board election and the special election process. The superintendent will announce election results within 7 working days of the election.

(2) The school board will determine a schedule for regular elections.

(i) Parents will have adequate notice of the time and place of the election.

(ii) Military members in a deployed or official tour of duty status at the time of the election may use e-mail or other electronic means to cast a vote by absentee ballot, provided that the absentee ballot is received by the district superintendent prior to the close of the scheduled election.

(iii) The superintendent must not disclose the particular vote of any absentee voter.

(iv) All other votes must be cast in person by secret ballot at the time and place of the election.

(v) The candidates(s) receiving the greatest number of votes will be elected as school board member(s).

(3) Each candidate for school board membership must be nominated in writing by a member of the school board electorate. Votes may be cast at the time of election for a write-in candidate who has not filed a nomination petition if the write-in candidate is qualified to serve in the position sought.

(4) The school board will determine the term of office for elected members, not to exceed 3 years, and the limit on the number of consecutive terms, if any. If the board fails to set these

terms by the first day of the first full month of the school year, the terms will be set at 3 years, with a maximum of two consecutive terms.

(5) When there is a sufficient number of school board vacancies that result in not having a quorum, a special election must be called by the superintendent.

(i) The nomination and election procedures for a special election will be the same as those of regularly scheduled school board elections.

(ii) Individuals elected by special election will serve until the next regularly scheduled school board election.

(iii) Vacancies may occur due to the school board member's resignation, death, removal for cause, or transfer, or the disenrollment of a school board member's child(ren) from the DDESS arrangement.

(6) The election process will provide staggered terms for board members (e.g., on the last day of the last month of each year, the term for some board members will expire).

(e) School Board Operating Procedures.

(1) The school board must operate from a written agenda at all meetings. Matters not placed on the agenda before the start of the meeting, but approved by a majority of the school board present, may be considered at the ongoing meeting and added to the agenda at that time.

(2) A majority of the total number of school board members authorized will constitute a quorum.

(3) School board meetings must be conducted a minimum of four times a year. The school board president consistent with government-wide guidelines concerning the timely announcement of public meetings, should notify the school board members and the public of the scheduled board meeting not less than 5 calendar days before the meeting is scheduled. School

board meetings will generally be open to the public. Pursuant to 10 U.S.C. 2164(d)(6), a school board need not comply with the provisions of the Federal Advisory Committee Act, but may close meetings as permitted by the Act.

(4) The school board will not be bound in any way by any action or statement of an individual member or group of members of the board, except when such action or statement is approved by a majority of the school board members during a meeting.

(5) Elected school board members may be removed by the USD(P&R), for dereliction of duty, malfeasance, or other grounds for cause shown. This authority may not be delegated below the level of the ASD(M&RA).

(i) The school board concerned may recommend such removal with a two-thirds majority vote.

(ii) Before a school board member may be removed, the member must be afforded due process, to include written notification of the basis for the action, review of the evidence or documentation considered by the school board, and an opportunity to respond.

Dated: March 8, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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